

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Section 272(f)(1) Sunset of the BOC Separate	)	WC Docket No. 02-112
Affiliate and Related Requirements	)	
	)	

**Comments of the  
Public Service Commission of Wisconsin**

On May 24, 2002, the Federal Communications Commission (FCC) released a *Notice of Proposed Rulemaking* (NOPR) in the above-captioned docket. The FCC has invited comments on 1) whether the structural separations safeguards established under § 272,<sup>1</sup> and imposed on Bell Operating Companies (BOCs), should be extended, despite the 3-year sunset provision in the statute; and 2) whether any alternative safeguards should be put in place in states where the statutory requirements have sunset. The Public Service Commission of Wisconsin (Wisconsin Commission) respectfully submits these Initial Comments for the FCC's consideration.

**The Wisconsin Situation**

SBC Ameritech is not currently authorized to provide interLATA long distance in Wisconsin.<sup>2</sup> Consequently, the expiration of the statutory 3-year sunset is not a matter of immediate relevance in this state. However, the market behavior of any BOC, once it has

---

<sup>1</sup> 47 U.S.C. § 272

<sup>2</sup> SBC Ameritech has not made a § 271 interLATA long distance filing with the FCC for Wisconsin. The Wisconsin Commission has opened a proceeding (docket 05-TI-170) to craft a process for evaluating the compliance of SBC Ameritech with the necessary mandates that must precede a recommendation of interLATA entry.

entered the interLATA arena (or any unregulated endeavor), is a matter of concern as to promoting competition and protecting consumers.

**Potential actions on the sunset of the structural separation requirements**

The FCC has noted several alternatives for the course of action that could be taken on this structural separation--sunset issue:

1. Allow everything to sunset,
2. Extend the statutory requirements by rule for a defined period of time,
3. Sunset statutory requirements but adopt less stringent separation requirements,
4. Allow the 3-year sunset, but retain nondiscrimination requirements and/or biennial audits, or
5. Adopt nonstructural safeguards such as reporting requirements.

The Commission respectfully suggests that the recent national revelations of corporate wrong-doing or alleged deceptive actions makes the current environment far from ripe for a complete regulatory hands-off approach to BOC entry into interLATA long distance ventures. This Commission is fully aware of potential efficiencies that can be gained by removal of structural separations requirements, and Congress has made it clear that national policy does not favor such separation in the long run. However, a total dissolution of regulatory oversight would be ill-advised. Consequently, this Commission cannot recommend alternative No. 1 noted above.

The alternative No. 2 approach--a blanket, fixed-period extension of the sunset date--seems to over simplify the need to craft an effective monitoring and compliance program and to merely delay the examination of the more specific approach to oversight that is needed.

Alternatives Nos. 3 – 5 represent the option of something less stringent than full separation but with the imposition of some continued regulatory oversight. The Commission believes that the development of such a regulatory mechanism is the most appropriate for the interLATA business of the BOCs. The exact structure of those oversight metrics must be carefully promulgated to achieve an optimal balance of competitive promotion and consumer protection with economic efficiency for the providers.

In the year 2000, the Wisconsin Commission authorized the provision of certain data services by Ameritech Advanced Data Services (AADS).<sup>3</sup> That authorization was subject to a variety of conditions. Although AADS was then a separate affiliate of Ameritech Wisconsin (AW), the focus of the various conditions are worthy of consideration as to the interLATA long distance business unit of a BOC, even if there is no full structural separation. The FCC should consider relevant conditions similar to the following selected items from the AADS orders.

Condition 2. AADS shall not seek or obtain terms, conditions, or prices for a service or service component from AW that are more advantageous than what any other similarly-situated nonaffiliated customer would obtain for that service or service component.

Condition 3. AADS shall not seek or obtain any service or service component from its affiliated local exchange companies, including service ordering, service availability, service installation, service maintenance and testing, and operational support systems on terms more favorable than the equivalent service or service components could be obtained from the affiliate by other providers of digital data services.

Condition 4. Except as permitted by the Commission, AADS is prohibited from creating with the direct or indirect cooperation of AW any service offering that ties AADS' unregulated services with any tariffed telecommunications service offered directly by AW to an end-user customer.

---

<sup>3</sup> Dockets 7825-TI-100 and 6720-TI-154, *Final Decision and Certificate* mailed January 13, 2000, and *Order on Rehearing* mailed May 4, 2000.

Condition 5. AADS shall not seek, accept, or use any inside or unpublished facilities or network information respecting any procedure, feature or capability in or associated with the services of AW.

Condition 6. AADS shall not directly or indirectly solicit or accept a subsidy from AW. AADS shall not accept or request any advantage from its affiliated local exchange companies through cross-subsidization.

Condition 7. AADS shall have no access to any customer proprietary network information associated with or attributable to its affiliated local exchange companies' provision of local exchange or access services that would assist AADS in developing, designing, marketing, or otherwise providing its services, unless that information is obtained with the express permission of the customer or is also made available to other providers of digital data services. AADS shall not seek or accept any other customer proprietary information from AW unless the information is available on a nondiscriminatory basis to both affiliates and non-affiliates or a customer has provided to AADS prior affirmative written consent to secure the information.

Condition 9. AADS shall not accept, solicit or use, except upon appropriate monetary compensation (including royalties or license fees) and under Commission jurisdiction pursuant to Wis. Stat. § 196.52(5)(b) any proprietary technology owned or paid for by AW, book assets intended to be used to provide non-regulated or competitive services, or any "non-book" assets, such as, but not limited to, goodwill, patents, copyrights, corporate brand names, service and trademarks, etc.

Condition 10. AADS shall not, for its benefit, seek or accept from AW unreasonable preference or discriminatory treatment in the development, design, or implementation of services (including network facilities) of AW. In effect, an unreasonable preference or discriminatory treatment of applicant exists if the interests of AW would not be advanced as if AW were a stand alone entity giving due regard to the interests of all present and potential customers, affiliated or otherwise.

Condition 11. AADS shall not encourage, advise, or communicate to AW in any manner, any information that is intended to influence AW to research, develop, design, or implement its services (including network facilities) to prefer or unjustly discriminate in favor of AADS.

Obviously, some of these conditions are tied to specific Wisconsin statutes. Accordingly, modifications would be needed to create a logical application and relevance to other BOCs.

To a large extent, these various conditions are aimed at assuring that the BOC does not discriminate in favor of its own affiliate or business unit. They also reflect the type of factors the Wisconsin Legislature has identified in Wis. Stat. §196.50(7) relative to interLATA certification:

**196.50(7) Interlata certification.** (a) This subsection applies to any telecommunications utility that is restricted under federal law or under any consent decree approved by a federal district court.

(b) Upon application by a telecommunications utility subject to this subsection for a certificate to provide interlata services, the commission shall consider all of the following factors in determining whether to grant a certificate of authority:

1. Whether granting the certificate is in the public interest.
2. Whether the utility will provide interconnection to its local exchange network under reasonable terms and conditions.
3. Whether the utility will permit appropriate resale and sharing of its services.
4. Whether the utility will provide unbundled services under reasonable terms and conditions.
5. Whether the utility provides its services in compliance with s. 196.204.
6. Whether competition in the interlata marketplace will be enhanced or hindered by granting the certificate.

(c) The commission may impose terms and conditions upon the grant of a certificate under par. (b) that are necessary to protect the public interest and promote competition.

(d) The commission, after providing notice and opportunity for hearing, shall issue its decision on the application within 180 days after the filing. The time period may be extended upon agreement of the commission and the applicant.

(e) An applicant may not be authorized to provide interlata service before the availability of dial-1 presubscription on an intralata basis in all of its exchanges except where it is technically infeasible to offer intralata dial-1 presubscription due to the action or inaction of a switch vendor.

The NOPR's alternative Nos. 3, 4, and 5 all suggest the development of some system of safeguards that could logically be congruent with the intentions of the conditions and factors noted above.

Alternative No. 4 also contemplates the availability of biennial audits of the interLATA service provisioning of the BOCs. The Wisconsin Commission supports the maintenance of a system that makes auditing a viable and legitimate regulatory response to concerns about BOC activities.

Given that BOCs have been authorized to provide interLATA services, through separate affiliates, in 13 states as of the issuance of the FCC NOPR, the FCC should give particular weight to the experiences and recommendations from those state commissions and the other providers that have had to compete with the BOCs in those states.

### **Conclusion**

The Wisconsin Commission does not favor adoption of an approach that lets the sunset of separate affiliate requirements stand without the imposition of some forms of safeguards to protect consumers and promote competition. In that same regard, this Commission believes that a simple fixed extension of the sunset period would merely delay the need to address the important determination of the necessary protections that should apply to BOC interLATA endeavors.

The Wisconsin Commission encourages the FCC to consider the experiences in those states where BOC interLATA service provisioning is approved and in place and to carefully craft requirements to avoid anti-competitive behaviors and discriminatory actions that inappropriately favor BOCs' own interLATA business ventures. The Wisconsin Commission also endorses an

WC Docket No. 02-112

approach that makes regulatory audits an available response by regulators to concerns about BOC activities.

Dated at Madison, Wisconsin, July 18, 2002 .

By the Commission:

/s/ Lynda L. Dorr

---

Lynda L. Dorr  
Secretary to the Commission

LLD:GAE:reb:t:\federal\fcc\PSCW activity\comments\FCC separate affiliate 02-112 comments